

### **REMARKS**

Prior to entry of this Amendment and Response, claims 1-33 were pending in the application. Following entry, claims 1-6, 8-20, and 22-50 will be pending.

#### Allowable Subject Matter

The Assignee notes with appreciation the Examiner's indication that claims 7-10 and 21-33 would be allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claims. Accordingly, the Assignee has amended claim 1 to include the limitations of claim 7, effectively rewriting claim 7 in independent form. Similarly, the Assignee has amended claim 11 to incorporate the limitations of claim 21, effectively rewriting claims 21 in independent form. Accordingly, the Assignee respectfully submits claims 1 and 11 are allowable, as amended.

Dependent claims 2-6, 8-10, 12-20, and 22-33 depend from either claim 1 or claim 11. Accordingly, these claims are also patentable. The Assignee makes this statement without reference to or surrendering the independent bases of patentability within each dependent claim. The Assignee respectfully requests the Examiner withdraw her rejections and allow all pending claims as soon as practicable.

#### Rejection Under 35 U.S.C. § 112

The Examiner rejected claim 12 under 35 U.S.C. § 112, alleging the claim was indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Specifically, the Examiner alleged claim 12 was grammatically unclear. Although the Assignee asserts the claim was allowable in its original form, claim 12 has been amended to clarify the subject matter of the claim. The Assignee respectfully submits this amendment was non-substantive and not made for reasons of patentability.

The Assignee respectfully requests the Examiner withdraw her rejection and allow claim 12.

### New Claims

The Assignee has added new claims 34-50 in this Amendment and Response. Claim 34 corresponds to previously-presented claim 7, and is written in independent form. Similarly, claims 35-37 correspond to previously-presented claims 8-10. Claim 38 corresponds to previously-presented claim 11, and is written in independent form. Similarly, claims 39-50 correspond to previously-presented claims 12-33.

In the Office action dated October 7, 2003, the Examiner indicated claims 7-10 and 21-33 would be allowable if rewritten in independent form, including all limitations of the corresponding base claim and any intervening claims. Claim 34 generally corresponds to claim 7, albeit without the limitations of claim 1. The Assignee respectfully submits claim 34 is patentable over the United States Patent No. 5,035,315 (the Fukusaki reference) for at least the following reason.

Claim 34 requires, among other limitations, “detecting the occurrence of situations of imbalance in which one of said first and second flows is richer than the other by a given number of products” and “intervening on said first flow and said second flow in the presence of said situations of imbalance by transferring at least one product from said richer flow to said poorer flow.” The Assignee finds no teaching or suggestion that any such detection or intervention occurs in Fukusaki.

Fukusaki simply splits “pieces of goods... into groups of a predetermined number of pieces” (Abstract). Indeed, Fukusaki’s transfer speed is “set to a predetermined constant speed” to transport grouping elements “at predetermined intervals to a sorting section” (Abstract; col. 4, lines 23-32). Although Fukusaki recites a velocity profile having a “low speed zone” and “high speed zone” (generally discussed in cols. 4 and 5), each zone is apparently maintained “for a given period of time according to a predetermined timing” (col. 5, lines 25-27). Fukusaki thus does not “detect... situations of imbalance.” Fukusaki instead counts a number of grouping elements P passing by a sensor, and changes between velocity profiles after a certain number of elements have passed (col. 5, lines 42-56). Thus, Fukusaki simply changes velocity profiles in response to a given number of elements passing a sensor. This is neither “detecting... situations

of imbalance,” nor “intervening on said first flow and said second flow in the presence of said situations of imbalance,” as required by claim 34. The Assignee accordingly respectfully submits claim 34 is patentable over Fukusaki.

Claim 38 similarly requires “detecting the occurrence of situations of imbalance” and “intervene[ing] on said first flow and said second flow in the presence of said situations of imbalance.” As described above, Fukusaki performs no such detection or intervention. Thus, claim 38 is patentable over Fukusaki as well.

Insofar as claims 35-37 and 39-50 depend from an independent claim shown herein to be patentable, these dependent claims are themselves patentable. The Assignee makes this statement without reference to or waiving the other bases for patentability within each dependent claim.

The Assignee respectfully submits claims 34-50 are allowable in their present form. Accordingly, the Assignee respectfully requests the Examiner allow claims 34-50 as soon as practicable.

### **CONCLUSION**

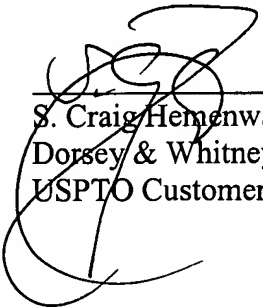
The Assignee believes that no extension fees or petitions for extensions of time are presently due. However, should any such fees or petitions be necessary, please consider this a request therefor and charge Deposit Account No. 04-1415 therefor.

The Assignee thanks the Examiner for her thorough review of the claims in this application. Further, the Assignee submits the application is now in condition for allowance, and respectfully requests the application be passed to allowance. In the event the Examiner has questions or comments and a telephone conversation would expedite a resolution, the Assignee invites the Examiner to contact the undersigned attorney at (303) 629-3400.

Appl. No. 10/004,903  
Amdt. dated: January 7, 2004  
Reply to Office action of October 7, 2003  
Attorney Docket No. 11233.00  
Express Mail No. EV 423 772 074 US

Dated this 7<sup>th</sup> day of July, 2004

Respectfully submitted:



S. Craig Hemenway, Reg. No. 44,759  
Dorsey & Whitney LLP  
USPTO Customer No. 20686

SCH/sd  
cc: IP Docketing